promptly, but are delayed some time by reason of an act of the government in the prosecution of a war, may be considered as broken by the seller, entitling the buyer to refuse acceptance. *Standard Scale, etc., Co.* v. *Baltimore Enamel, etc., Co.* (Md.), 110 Atl. 486, 9 A. L. R. 1502 (1920); *Primos Chemical Co.* v. *Fulton Steel Corp.*, 266 Fed. 945 (1920). Also where a vessel failed to complete its voyage in order to save itself and cargo from the dangers of war, the vessel owner was entitled to no freight, there being no delivery as contracted for. *The Harriman*, 9 Wall. (U. S.) 161 (1869). Finally where liability for non-performance may be excused, still impossibility of performance can never be treated as equivalent to performance so as to entitle one to affirmative relief. Note, 21 L. R. A. 645.

CONSTITUTIONAL LAW—CLASS LEGISLATION—VALIDITY OF STATUTE WHICH GIVES PREFERENCE TO VETERANS.—The plaintiff desired to be appointed to a vacancy in the police department in the city of New York under the civil service laws. A statute provided that preference in appointment and promotion in the civil service was to be given to persons who had served in the Army or Navy of the United States. The plaintiff passed the regular competitive examination, and his name had been placed as one of the three highest on the list of those eligible for appointment; but he had had no military record. The three names highest on the list were those of men who had had no military record. In compliance with the statute the Municipal Civil Service Commission was about to certify the names of three men who served in the Army during the recent war to the police commissioner for appointment, these men having had their names placed on the list by having passed an examination in compliance with the statute. The plaintiff sued for a writ of mandamus to compel the members of the Municipal Civil Service Commission to certify the three names standing highest on the list to the police commissioner for appointment, contending that the statute giving preference to veterans was unconstitutional and void. The Constitution of the State of New York provided that preference in appointment and promotion in the civil service was to be given to veterans who had served in the military forces of the United States during the Civil War (Art. 5, § 9). *Held*, the statute is unconstitutional; and the application for a mandamus granted. *Barthelmess* v. *Cukor* (N. Y.), 132 N. E. 140 (1921).

The legislative power of the State extends to every subject of legislation, except in particular cases where such power is expressly or impliedly limited by the constitution of the State, or by the Constitution of the United States. *McPherson* v. *Blacker*, 146 U. S. 1 (1892); *Couk* v. *Skeen*, 109 Va. 6, 63 S. E. 11 (1908).

Statutes giving veterans preference in appointment to office are generally held valid under the usual State constitution. *State ex. rel. Cowden* v. *Miller*, 66 Minn. 90, 68 N. W. 732 (1896); *Opinion of Justices* 166 Mass. 589, 44 N. E. 625, 34 L. R. A. 58 (1896); *Goodrich* v. *Mitchell*, 68 Kan. 765, 75 Pac. 1034, 64 L. R. A. 945, 104 Am. St. Rep. 429, 1 Ann. Cas. 288 (1904). But in these three cases there was nothing in the several constitutions to regulate the formation of the civil service. It is well settled that statutes giving preference to veterans in appointment in the civil service are not void as violating provisions of the State constitutions

against granting privileges to any citizen or class of citizens which may not be available to all citizens alike. *Shaw* v. *City Council of Marshalltown,* 131 Iowa 128, 104 N. W. 1121, 10 L. R. A. (N. S.) 825 and note (1905); *Goodrich* v. *Mitchell, supra;* but see *State* v. *Garbroski,* 111 Iowa 496, 82 N. W. 959, 56 L. R. A. 570, 82 Am. St. Rep. 524 (1900). Nor are such statutes void as violating the 14th Amendment to the Constitution of the United States. *Shaw* v. *City Council of Marshalltown, supra; People ex rel. Akin* v. *Loeffler,* 175 Ill. 585, 51 N. E. 785 (1898).

It has sometimes been said that veterans must be equally as well qualified as any other persons who are eligible for appointment before preference can be given to them. But upon examination of the cases, it appears that courts so holding have followed statutes which expressly provide that the veteran shall be so qualified. *Goodrich* v. *Mitchell, supra; McBride* v. *City Council of Independence,* 134 Iowa 501, 110 N. W. 157 (1907). But the veteran seeking advantage of statutes giving him preference in appointment to civil office must be qualified to fill the office or employment and to properly and efficiently discharge the duties of such office. *Brown* v. *Russell,* 166 Mass. 14, 43 N. E. 1005, 32 L. R. A. 253, 55 Am. St. Rep. 357 (1896); *Matter of Keymer,* 148 N. Y. 219, 42 N. E. 667, 35 L. R. A. 447 (1896). And to determine whether the veteran is qualified, he should be required to take the regular competitive examination, and if he passes such examination, his name should be placed on the list of those eligible for appointment; and then the preference given him in certifying his name for appointment over those who stand above him on the list without a military record. *Matter of Keymer, supra.*

The New York Court suggests in the instant case, however, that it is within the power of the legislature to provide that military experience shall be considered as a contributing factor in the results of the competitive examination. This seems sound, and is believed to be the proper rule; but the military service, of course, should not be measured in arbitrary terms, for then it would not be a contributing factor in the qualifications of the veteran applicant. Thus, in such case, the examiners should take into account the nature and kind of military service, and the length of such service, together with the efficiency of the applicant in such service.

INTOXICATING LIQUORS—TRANSPORTATION—LIQUOR CARRIED BY AUTOMOBILE DRIVER IN POCKET OF COAT NOT CARRIED IN BAGGAGE AS PERMITTED BY LAW.—A State statute permitted a traveler to carry a limited quantity of liquor in his baggage. The accused, while taking a journey in his automobile carried this quantity in the pocket of his overcoat, which he was wearing at the time of his arrest. In a prosecution for the unlawful transportation of intoxicating liquor the accused contended that this statute authorized the carrying of liquor under the traveler's personal control, without reference to the manner in which it was carried. *Held,* transportation unlawful. *Snarr* v. *Commonwealth* (Va.), 109 S. E. 590 (1921).

Since, by virtue of § 33 of the National Prohibition Act, there may be lawful possession of liquors acquired prior to the passage of that Act and which are kept for consumption by the owner and his family, it is held that the transportation of such liquors from a private warehouse to the residence of the owner does not come within the prohibition of the Act. *Street* v. *Lincoln Safe Deposit Co.,* 254 U. S. 88, 10 A. L. R. 1548,